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Hashim bin Mahzin v Public Prosecutor

B HIGH COURT (KOTA KINABALU) — CRIMINAL CASE NO BKI-42A AC-1/1 OF 2013
RAVINTHRAN J
4 DECEMBER 2013

C *Criminal Law — Corruption — Corruptly receiving gratification — Investigation on outrage of modesty case — Police solicited and obtained bribes from accused person's sister — Whether defence by accused person raised reasonable doubt in respect of solicitation charge — Malaysian Anti-Corruption Commission Act 2009 ss 16(a)(B), 17(a) & 50(1)*

D

This was an appeal against the conviction and sentence of the appellant on three charges under Malaysian Anti-Corruption Commission Act 2009 ('the MACC Act'). The appellant was a police sergeant accused of soliciting and obtaining bribes in the course of investigating an outrage of modesty case E against one Iswanddey. Under the first charge, the appellant was charged under s 16(a)(B) of MACC Act with soliciting gratification of RM1,000 from Animah, who was Iswanddey's sister. Under the second charge, the appellant was charged under s 17(a) of the MACC Act with accepting RM100 from Animah through one Masreh on the same day at 2.30pm as an inducement to F settle the said outraging of modesty case. Under the third charge, the appellant was charged under s 17(a) of the MACC Act with accepting RM500 from Masreh as an inducement to settle the said outraging of modesty case. Witnesses claimed that they met the appellant at his office. The appellant allegedly told them that he could settle the outrage case against Iswanddey for G RM1,000. Animah told the appellant they did not have the money but the appellant asked them to discuss a way to obtain the money and that the case would be dropped. In his judgment, the sessions court judge accepted the evidence of these witnesses that they heard the appellant soliciting RM1,000 from Animah to settle the said outrage case against her brother. The sessions H court judge ('SCJ') noted that the Iswandey was released the same morning unconditionally and he walked out a free man from the police station. In respect of the second and third charges under s 17(a), the SCJ found that there was credible evidence that the appellant accepted RM100 and RM500 to settle the case. At 2.30pm the same day, they met the appellant and Animah said she I took a RM100 note which she put in an envelope and passed to her husband. Her husband passed it under the table to Masreh who put it on the table and pushed it to the appellant who took it. The SCJ accepted the evidence of Animah, Atoh and Masreh. He considered the transcript of a subsequent recorded telephone conversation between the appellant and Masreh where the

appellant was heard saying that he had received RM100. The SCJ apparently found this to be corroborative. Almost a month after the incidents relating to the first and second charges, Masreh said that he bumped into the appellant outside the same restaurant. The appellant demanded the balance of RM900. He bumped into the appellant on 13 December 2010 again and was asked for the balance of RM900 again. The following day, he lodged a report with the Malaysian Anti-Corruption Commission (MACC). The MACC set up the usual trap. Prior to the trap, two phone conversations between the appellant and Masreh were recorded by the MACC. In one of the two recorded conversations, the appellant is heard referring to the RM100 that he had received previously. However, he was not heard demanding for the balance of the RM900. When the appellant was arrested, the marked notes in the sum of RM500 were found on his person. The MACC officers had observed him accepting the said RM500 from from Masreh during entrapment incident. For this reason, the SCJ invoked the presumption under s 50(1) of the MACC Act against the appellant. In conclusion, the SCJ held that the defence did not rebut the presumption created under s 50(1) of the MACC Act in respect of the acceptance charges. He also held that the defence did not raise a reasonable doubt in respect of the solicitation charge. Hence, the present appeal.

Held, dismissing the appeal:

(1) The charge was not that inducement offered by the appellant was for releasing Iswanddey from police custody but it was for 'settling' the outrage of modesty case against him. Therefore, the timing of the release was not strictly relevant to rebut the element of inducement and the SCJ correctly ignored this point (see para 9).

(2) The appellant was obliged to release Iswanddey as the DPP had discontinued the case. Animah and her relatives had pleaded in the meeting with the appellant that they were unable to raise RM1,000. In the premises, it is not unbelievable that the appellant had agreed to accept RM100. The version of Animah that the appellant accepted RM100 was actually corroborated by the telephone transcript. In the transcript, the appellant referred to the RM100 that he had received earlier. It must also be noted that RM100 that was paid to the appellant was never produced in court and this was also made an issue by counsel for appellant. However, it is common ground that a trap had not been set up by the MACC when Animah paid RM100 to the appellant. Only the RM500 referred to in the third charge was paid pursuant to a trap. In the premises, the failure of the prosecution to tender the RM100 as an exhibit did not justify the invocation of adverse inference (see para 11).

(3) In the transcript, the appellant only referred to the RM100 he received earlier. However, Masreh had also referred to the earlier demand by the appellant for the balance of RM1000 when he bumped into him.

Therefore, an inconsistency on a single point cannot discredit his entire testimony. In any event, in respect of the third charge, the presumption in s 50(1) operated against the appellant and the SCJ found that he had not discharged it on a balance of probabilities (see para 13).

(4) The SCJ had applied the correct sentencing principles. The maximum punishment was twenty years imprisonment. The SCJ only imposed sentences ranging from eight months to 12 months which he ordered to run concurrently. The appellant was entrusted with wide powers as a policeman and he abused it by demanding a bribe to 'settle' a case. If the SCJ erred in sentencing, it was only on the side of leniency as corruption offences committed by public servants should be visited with appropriate deterrent punishment (see para 15).

[Bahasa Malaysia summary

Ini merupakan satu rayuan terhadap sabitan dan hukuman perayu ke atas tiga pertuduhan di bawah Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 ('Akta SPRM'). Perayu merupakan seorang sarjan polis yang dituduh meminta dan memperoleh rasuah semasa menyiasat kes mencabul kehormatan terhadap Iswanddey. Di bawah pertuduhan pertama, perayu dituduh di bawah s 16(a)(B) Akta SPRM dengan meminta suapan sebanyak RM1,000 daripada Animah, yang merupakan kakak Iswanddey. Di bawah pertuduhan kedua, perayu dipertuduh di bawah s 17(a) Akta SPRM dengan menerima RM100 daripada Animah melalui Masreh pada hari yang sama pada pukul 2.30 petang sebagai satu dorongan untuk menyelesaikan kes mencabul kehormatan tersebut. Di bawah tuduhan ketiga, perayu dituduh di bawah s 17(a) Akta SPRM dengan menerima RM500 daripada Masreh sebagai satu dorongan untuk menyelesaikan kes mencabul kehormatan. Saksi-saksi mendakwa bahawa mereka menemui perayu di pejabatnya. Perayu dikatakan memberitahu mereka bahawa dia boleh menyelesaikan kes mencabul kehormatan terhadap Iswanddey untuk RM1,000. Animah memberitahu perayu bahawa mereka tidak mempunyai duit tetapi perayu meminta mereka untuk memikirkan cara untuk mendapatkan wang dan bahawa kes tersebut akan digugurkan. Dalam dapatan beliau, hakim mahkamah sesyen menerima keterangan saksi-saksi tersebut bahawa mereka mendengar perayu meminta RM1,000 daripada Animah untuk menyelesaikan kes mencabul kehormatan terhadap abangnya. Hakim Mahkamah Sesyen ('HMS') mendapati bahawa Iswandey dibebaskan pada pagi yang sama tanpa syarat dan dia berjalan keluar sebagai seorang lelaki bebas daripada balai polis tersebut. Berhubung dengan pertuduhan kedua dan ketiga di bawah s 17(a), HMS mendapati bahawa terdapat keterangan boleh dipercayai bahawa perayu menerima RM100 dan RM500 untuk menyelesaikan kes tersebut. Pada pukul 2.30 petang pada hari yang sama, mereka menemui perayu dan Animah mengatakan dia mengambil sekeping nota RM100 yang diletakkannya dalam sekeping sampul surat dan diberikan kepada suaminya. Suaminya memberikan sampul tersebut kepada

Masreh yang meletakkannya di atas meja dan menolaknya kepada perayu yang mengambilnya. HMS menerima keterangan Animah, Atoh dan Masreh. Beliau mempertimbangkan transkrip perbualan telefon sebelumnya yang direkodkan di antara perayu dan Masreh di mana perayu didengar mengatakan bahawa dia telah menerima RM100. HMS mendapati perkara ini sebagai sokongan. Hampir sebulan selepas insiden-insiden berhubung pertuduhan pertama dan kedua, Masreh mengatakan bahawa dia terserempak dengan perayu di luar restoran yang sama. Perayu meminta baki sebanyak RM900. Dia sekali lagi terserempak dengan perayu pada 13 Disember 2010 dan ditanya untuk baki RM900. Hari berikutnya, dia membuat laporan dengan Suruhanjaya Pencegahan Rasuah Malaysia ('SPRM'). SPRM membuat perangkap yang lazimnya. Sebelum perangkap tersebut, dua perbualan telefon di antara perayu dan Masreh direkodkan oleh SPRM. Dalam satu daripada dua perbualan telefon tersebut, perayu didengar merujuk kepada RM100 yang diterimanya sebelumnya. Walau bagaimanapun, dia tidak didengar meminta untuk baki sebanyak RM900. Apabila perayu ditahan, nota-nota berjumlah RM500 didapati berada dengannya. Pegawai-pegawai SPRM melihat dia menerima RM500 tersebut daripada Masreh semasa insiden pemerangkapan. Untuk alasan ini, HMS menggunakan anggapan di bawah s 50(1) Akta SPRM terhadap perayu. Sebagai kesimpulan, HMS memutuskan bahawa pihak pembelaan tidak mematahkan anggapan yang diwujudkan di bawah s 50(1) Akta SPRM berhubung dengan pertuduhan penerimaan. Beliau juga memutuskan bahawa pihak pembelaan tidak menimbulkan keraguan yang munasabah berhubung pertuduhan permintaan. Oleh itu, rayuan ini dibuat.

Diputuskan, menolak rayuan:

(1) Pertuduhan tersebut bukanlah bahawa dorongan ditawarkan oleh perayu untuk membebaskan Iswanddey daripada jagaan polis tetapi ia hanyalah untuk 'menyelesaikan' kes mencabul kehormatan terhadapnya. Oleh itu, masa dilepaskan adalah tidak relevan untuk mematahkan elemen dorongan dan HMS bertindak tepat dengan mengabaikan poin ini (lihat perenggan 9).

(2) Perayu bertanggungan untuk melepaskan Iswanddey memandangkan TPP tidak meneruskan kes tersebut. Animah dan saudaranya telah memplid dalam pertemuan dengan perayu bahawa mereka tidak mampu mendapatkan RM1,000. Berdasarkan premis ini, adalah tidak boleh dipercayai bahawa perayu telah bersetuju untuk menerima RM100. Versi Animah bahawa perayu menerima RM100 sebenarnya disokong oleh transkrip telefon. Dalam transkrip tersebut, perayu merujuk kepada RM100 yang diterimanya sebelumnya. Perlu diambil perhatian bahawa RM100 yang dibayar kepada perayu tidak pernah dikemukakan di mahkamah dan ini juga dijadikan satu isu oleh peguam cara yang mewakili perayu. Walau bagaimanapun, adalah alasan biasa bahawa perangkap tidak disediakan oleh SPRM apabila Animah membayar

RM100 kepada perayu. Hanya RM500 yang dirujuk dalam pertuduhan ketiga dibayar menurut perangkap tersebut. Dalam premis ini, kegagalan pihak pendakwaraya untuk menender RM100 sebagai eksibit tidak mewajarkan penggunaan anggapan berlawanan belum ditubuhkan oleh SPRM apabila Animah dibayar RM100 kepada perayu. Hanya RM500 disebut dalam pertuduhan ketiga telah dibayar menurut perangkap. Dalam premis itu, kegagalan pihak pendakwaan untuk menender RM100 itu sebagai eksibit tidak membenarkan penggunaan anggapan berlawanan (lihat perenggan 11).

(3) Dalam transkrip tersebut, perayu hanya merujuk kepada RM100 yang diterimanya sebelum itu. Walau bagaimanapun, Masreh juga merujuk kepada permintaan terdahulu oleh perayu untuk baki berjumlah RM1000 apabila dia terserempak dengan perayu. Oleh itu, satu percanggahan pada satu poin tunggal tidak menolak keseluruhan keterangannya. Dalam mana-mana keadaan, berhubung pertuduhan ketiga, anggapan dalam s 50(1) bertindak terhadap perayu dan HMS mendapati bahawa dia tidak dilepaskan atas imbangan kebarangkalian (lihat perenggan 13).

(4) HMS telah menggunakan prisip hukuman dengan tepat. Hukuman maksimum adalah dua puluh tahun penjara. HMS hanya mengenakan hukuman antara lapan hingga 12 bulan di mana beliau arahkan berjalan dengan serentak. Perayu telah diamanahkan dengan kuasa besar sebagai seorang pegawai polis dan dia telah menyalahgunakannya dengan meminta rasuah untuk 'menyelesaikan' satu kes. Sekiranya HMS terkhilaf dalam menghukum, ianya hanya pada sisi kelonggaran memandangkan kesalahan rasuah yang dilakukan oleh pegawai-pegawai awam perlu dikenakan dengan hukuman pencegahan yang sesuai (lihat perenggan 15).]

Notes

For a case on corruption, see 5(1) *Mallal's Digest* (4th Ed, 2014 Reissue) para 1902.

Legislation referred to

Malaysian Anti-Corruption Commission Act 2009 ss 16(a)(B), 17(a), 50(1)

Zahir Shah (Zahir Shah & Co) for appellant.

DPP Mohd Asnawi bin Abu Hanipah (Suruhanjaya Pencegahan Rasuah Malaysia) for respondent.

Ravinthran J

INTRODUCTION

[1] This is an appeal against the conviction and sentence of the appellant on three charges under Malaysian Anti-Corruption Commission Act 2009 ('MACC Act 2009').

BRIEF BACKGROUND FACTS

[2] The appellant was a police sergeant attached to the Kota Belud Police Station. He is accused of soliciting and obtaining bribes in the course of investigating an outrage of modesty case against Iswanddey bin Seban ('PW12'). Under the first charge, the appellant was charged under s 16(a)(B) of the MACC Act 2009 with soliciting gratification of RM1000 from Animah bt Seban ('PW5') who is the sister of Iswanddey bin Seban on 16 October 2010 at 10am. Under the second charge, the appellant was charged under s 17(a) of the MACC Act 2009 with accepting RM100 from Animah bt Seban through one Masreh bin Masah ('PW17') on the same day at 2.30pm as an inducement to settle the said outraging of modesty case. Under the third charge, the appellant was charged under s 17(a) of the MACC Act 2009 with accepting RM500 from Masreh bin Masah on 14 December 2012 as an inducement to settle the said outraging of modesty case. The said charges read as follows:

> First charge: Bahawa kamu pada 16 Oktober 2010, jam lebih kurang 10.00 pagi di Ibu Pejabat Polis Daerah Kota Belud, dalam daerah Kota Belud, dalam Negeri Sabah, sebagai seorang agen Kerajaan Malaysia iaitu Penolong Pegawai Penyiasat Jenayah berpangkat Sarjan RF/91666 yang bertugas di Cawangan Siasatan Jenayah Ibu Pejabat Polis Daerah Kota Belud Sabah telah secara rasuah meminta untuk diri kamu satu suapan, iaitu, wang tunai RM1,000 daripada Aminah Bt Seban, sebagai dorongan bagi kamu untuk melakukan perkara yang dicadangkan iaitu kononnya menyelesaikan kes mencabul kehormatan melibatkan Iswanddey Bin Seban, dan dengan itu kamu telah melakukan satu kesalahan di bawah seksyen 16(a)(B) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 yang boleh dihukum di bawah seksyen 24 Akta yang sama.
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> Hukuman:-
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> a) Penjara tidak melebihi dua puluh tahun; dan
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> b) Denda tidak kurang lima kali ganda jumlah atau nilai suapan, atau sepuluh ribu ringgit, mengikut mana-mana yang lebih tinggi.
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> Second charge: Bahawa kamu pada 16 Oktober 2010, jam lebih kurang 2.30 petang di Restoran Seri Pandan, Tingkat Bawah, Lot 6, Blok C, Kompleks Sri Ranggan, dalam daerah Kota Belud, dalam Negeri Sabah, sebagai seorang ejen Kerajaan Malaysia iaitu Penolong Pegawai Penyiasat Jenayah berpangkat Sarjan RF/91666 yang bertugas di Cawangan Siasatan Jenayah Ibu Pejabat Polis Daerah Kota Belud Sabah telah secara rasuah memperoleh untuk diri kamu satu suapan, iaitu, wang

tunai RM100 daripada Aminah bt Seban, melalui Masreh Bin Masah sebagai dorongan bagi melakukan suatu perbuatan berhubungan dengan hal ehwal principal kamu, iaitu, kononnya menyelesaikan kes mencabul kehormatan melibatkan Iswanddey Bin Seban, dan dengan itu kamu telah melakukan satu kesalahan di bawah seksyen 17(a) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 yang boleh dihukum di bawah seksyen 24 Akta yang sama.

Hukuman:-

a) Penjara tidak melebihi dua puluh tahun; dan

b) Denda tidak kurang lima kali ganda jumlah atau nilai suapan, atau sepuluh ribu ringgit, mengikut mana-mana yang lebih tinggi.

Third charge: Bahawa kamu pada 14 Disember 2010, jam lebih kurang 4.00 petang di Restoran Seri Pandan, Tingkat Bawah, Lot 6, Blok C, Kompleks Sri Ranggan, dalam daerah Kota Belud, dalam Negeri Sabah, sebagai seorang ejen Kerajaan Malaysia iaitu Penolong Pegawai Penyiasat Jenayah berpangkat Sarjan RF/91666 yang bertugas di Cawangan Siasatan Jenayah Ibu Pejabat Polis Daerah Kota Belud Sabah telah secara rasuah memperoleh untuk diri kamu satu suapan, iaitu, wang tunai RM500 daripada Masreh Bin Masah, sebagai dorongan bagi melakukan suatu perbuatan berhubungan dengan hal ehwal principal kamu, iaitu, kononnya menyelesaikan kes mencabul kehormatan melibatkan Iswanddey Bin Seban, dan dengan itu kamu telah melakukan satu kesalahan di bawah seksyen 17(a) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 yang boleh dihukum di bawah seksyen 24 Akta yang sama.

Hukuman:-

a) Penjara tidak melebihi dua puluh tahun; dan

b) Denda tidak kurang lima kali ganda jumlah atau nilai suapan, atau sepuluh ribu ringgit, mengikut mana-mana yang lebih tinggi.

[3] The case outlined by the prosecution was as follows. The crucial witnesses of the prosecution were Iswanddey, Animah, Masreh and Atoh bin Gindal ('PW6'). During the material time, Iswanddey was investigated for an outrage of modesty offence. Animah is his sister. Atoh bin Gindal (PW6) is Animah's husband. Masreh is the cousin of Atoh bin Gindal. These witnesses claimed that they met the appellant at his office on 16 October 2010 at around 10.30am. The alleged appellant told them that he could settle the outrage case against Iswanddey for RM1,000. Animah told the appellant they did not have the money. The appellant asked them to discuss a way to obtain the money and that the case would be dropped. In his judgment, the sessions court judge accepted the evidence of these witnesses that they heard the appellant soliciting RM1,000 from Animah to settle the said outrage case against her brother. The sessions court judge noted that the PW12 was released the same morning unconditionally and he walked out a free man from the police station. In

respect of the second and third charges under s 17(a), the sessions court judge found that there was credible evidence that the appellant accepted RM100 and RM500 from PW17 to settle the case.

[4] The background facts to second and third charges are as follows. Animah, Iswanddey, Masreh and Atoh bin Gindal told the court that at 2.30pm the same day, they met the appellant at Restoran Seri Pandan. Animah said she took a RM100 note which she put in an envelope and passed to her husband. Her husband passed it under the table to Masreh who put it on the table and pushed it to the appellant who took it. The learned sessions court judge accepted the evidence of Animah, Atoh bin Gindal and Masreh. He considered the transcript of a subsequent recorded telephone conversation between the appellant and Masreh where the appellant is heard saying that he had received RM100 from PW17. The sessions court judge apparently found this to be corroborative. In respect of the third charge, the background facts are as follows. Almost a month after the incidents relating to the first and second charges, Masreh said that on 24 November 2010, he bumped into the appellant outside the same restaurant. The appellant demanded the balance of RM900. He bumped into the appellant on 13 December 2010 again outside the Kota Belud courthouse. The appellant again asked for the balance of RM900. The following day, he lodged a report with the Malaysian Anti-Corruption Commission (MACC). The MACC set up the usual trap. Prior to the trap, two phone conversations between the appellant and Masreh were recorded by the MACC. In one of the two recorded conversations, the appellant is heard referring to the RM100 that he had received previously. However, he is not heard demanding for the balance of the RM900. Nonetheless, the appellant said that Masreh 'can give him what he can give'. When the appellant was arrested, the marked notes in the sum of RM500 were found on his person. The MACC officers had observed him accepting the said RM500 from from Masreh during entrapment incident. For this reason, the learned sessions court judge invoked the presumption under s 50(1) of the MACC Act 2009 against the appellant.

[5] The appellant gave sworn testimony to defend himself. In addition, he called six other witnesses. The appellant denied soliciting RM1,000 from the Animah. He said that he told Animah at the Kota Belud Police Station 'there is nothing more' about the outrage of modesty case as the deputy public prosecutor had discontinued the case (NFA). He blamed Masreh for allegedly setting him up. He said that he had arrested Masreh for a drug case in 2007 and that is the reason that he bore a grudge against him. He also said that Masreh owed him money and that is the reason for the reference to money in the two recorded phone conversations with him. The appellant called one Insp Juriaman bin Tiur ('DW3') to support his assertion that he had once arrested Masreh for suspected involvement in a drug case. The appellant called the

owner ('DW4') of Restoran Seri Pandan to support his assertion that the Masreh owed him some money. DW4 testified that sometime at the end of November 2009, as he was going about his usual business at the restaurant, he witnessed the appellant giving some money for bus fare to Masreh. Another witness ('DW5') also told the court that Masreh had once borrowed RM200 from the appellant. The other witnesses that the appellant called were aimed at rebutting the assertions of Animah that he solicited RM1,000 at the police station. Corporal Zamlly bin Imron ('DW2') told that court on 16 October 2010, he heard the appellant explaining about the bail amount of RM1,000 to a woman named Animah. He also said that he was with the appellant at Restoran Seri Pandan from 1pm to 3pm the same day. Corporal Romeo bin Banggaau told the court that he met Animah on 16 October 2010 and she enquired about her brother. He also said that on 24 November 2010, he was with the appellant and that no one came to see him. Corporal Missin bin Golingan ('DW7') told the court that on 16 October 2010, he heard the appellant asking Animah to furnish RM1,000 for court bail. He also said that he was with the appellant at Restoran Seri Pandan from 1pm to 3pm on 16 October 2010 and that no one came to see them.

[6] The learned sessions court judge rejected the evidence of the appellant's witnesses for the following reasons. He said that Iswanddey had been unreleased unconditionally from his remand by the time the appellant met Animah in his office. Therefore, it is not possible for the appellant's witness, Corporal Zamlly bin Imron, to overhear the appellant explaining that the sum of RM1,000 was to secure the bail bond conditions. In my view, the sessions court judge's reasoning is correct as the case for the prosecution is not that the appellant demanded RM1,000 for the release of Iswanddey. The charge is that appellant demanded the said sum to 'settle' the case. In any event, as noted by the sessions court judge, Animah would not have known that Iswanddey was due to be released that day. In respect of the evidence of the police witness said they were with the appellant, the sessions court judge did not accept their evidence. In conclusion, he held that the defence did not rebut the presumption created under s 50(1) of the MACC Act 2009 in respect of the acceptance charges. He also held that the defence did not raise a reasonable doubt in respect of the solicitation charge.

GROUNDS OF APPEAL

[7] Counsel for appellant has raised a number of grounds to appeal against the conviction. I shall address them below. Most of the grounds are in respect of the motive of the prosecution witnesses; especially Masreh who alleged bore a grudge against the appellant.

[8] Counsel for appellant submitted that Masreh only lodged a report with MACC two months after the appellant solicited RM1,000 from Animah at the police station. He said that the delay in lodging the report was unexplained. I do not think that the delay is significant. The explanation for the delay is found in the narrative of the prosecution's case. Masreh said she bumped into the appellant only on 24 November 2010 and again on 13 December 2010. The appellant asked for the balance of RM900. Thus it can be presumed that there was no pressing reason for Masreh or Animah to lodge a complaint, especially since Iswanddey had been released and was not subjected to further police investigation. Counsel for appellant submitted that Masreh had been arrested before for a drug case by the appellant but had repeatedly denied it during cross-examination. The motive of Masreh in lodging the complaint against the appellant is allegedly revenge. The sessions court judge was aware of this allegation. The sessions court judge apparently did not consider the denial of Masreh as tainting his entire testimony. It is natural for witnesses to be defensive when confronted with their alleged wrong doings in the past. Therefore, the sessions court judge was correct not to reject his entire testimony merely because he lied about being arrested earlier. Counsel for appellant also pointed out that Masreh had failed to attend court a number of times during his lengthy testimony and that the sessions court judge had even issued a warrant of arrest against him once. However, the sessions court judge considered the testimonies of Aminah, Atoh bin Gindal and Iswanddey as well. There is no suggestion that these witnesses had a grudge against the appellant. These witnesses, though with some minor discrepancies, generally gave a similar account of the meeting in the office of the appellant on 16 October 2010 when the demand for RM1,000 was made by the latter. Furthermore, the alleged arrest of Masreh took place some three years earlier. I am therefore of the view that the sessions court judge correctly ignored the previous arrest of Masreh by the appellant in determining the credibility of the prosecution's witnesses. For this reason, other related grounds have no merit either.

[9] Counsel for appellant submitted that Iswanddey was released from custody before any bribe was given to the appellant by Animah. However, as I said earlier, the charge is not that inducement offered by the appellant is for releasing Iswanddey from police custody but it is for 'settling' the outrage of modesty case against him. Therefore, the timing of the release is not strictly relevant to rebut the element of inducement and sessions court judge correctly ignored this point.

[10] Counsel for appellant submitted at length about the apparent discrepancies in the testimonies of Animah, Atoh bin Gindal, Iswanddey and Masreh in respect of the meeting at the appellant's office and the meeting at Restoran Seri Pandan. The learned sessions court judge ignored the minor discrepancies. Some of the discrepancies pertained to the shape of the table, the

A sitting arrangement and the manner the bribe was allegedly handed to the appellant. There was also a discrepancy whether RM100 note or two RM50 notes were handed over to the appellant. It must be noted that these witnesses were giving evidence in respect of incidents that occurred more than a year ago. It cannot be expected that there should be complete unanimity in every detail B of their lengthy testimonies. However, the witnesses were consistent in respect of the basic facts that supported the case of the prosecution. They told the court that the appellant had demanded RM1,000 bribe to settle the outrage case against Iswanddey and that he had previously 'settled' cases for a larger sum. In respect of the charge of accepting RM100 as inducement, the prosecution C witnesses were unanimous that the appellant had accepted RM100 that was given to him at Restoran Seri Pandan. The learned sessions court judge accepted them as credible witness. He had the audio-visual advantage of observing them in the witness box. Although, demeanour is not the touchstone of truth, due weight should be given to the finding of the trial judge unless D there were some major contradictions in the evidence of the witnesses.

[11] Counsel for appellant also submitted that the prosecution's case is that appellant had agreed to accept only ten per cent of the RM1,000 that he E allegedly demanded and that this is unbelievable. I see nothing wrong unbelievable about it. The appellant was obliged to release Iswanddey as the DPP had discontinued (NFA) the case. Animah and her relatives had pleaded in the meeting with the appellant that they were unable to raise RM1,000. In the premises, it is not unbelievable that the appellant had agreed to accept F RM100. The version of Animah that the appellant accepted RM100 is actually corroborated by the telephone transcript. In the transcript, the appellant referred to the RM100 that he had received earlier. It must also be noted that RM100 that was paid to the appellant was never produced in court and this was also made an issue by counsel for appellant. However, it is common ground G that a trap had not been set up by the MACC when Animah paid RM100 to the appellant. Only the RM500 referred to in the third charge was paid pursuant to a trap. In the premises, the failure of the prosecution to tender the RM100 as an exhibit does not justify the invocation of adverse inference.

H **[12]** In respect of the telephone conversation transcripts, counsel for appellant submitted that Masreh told the court that the appellant demanded the balance of RM900 when he 'bumped' into the appellant but there was no mention of it in the said transcripts. I see no merit in this submission. The appellant is a policeman who is alleged to have demanded the balance of a I bribe. Surely, it is inconceivable that the appellant would find it necessary to recapitulate all that had transpired previously in a telephone conversation. However, the appellant referred to the 'RM100' that he had received earlier and the sessions court judge found this to be corroborative of the version of the prosecution witnesses. I see nothing wrong in this finding.

[13] Finally, counsel for appellant submitted that Masreh had lied in court when he said that the appellant had asked for the balance of the RM1,000 in the telephone conversation. In the transcript, the appellant only referred to the RM100 he received earlier. However, Masreh had also referred to the earlier demand by the appellant for the balance of RM1,000 when he bumped into him. Therefore, an inconsistency on a single point cannot discredit his entire testimony. In any event, in respect of the third charge, the presumption in s 50(1) operated against the appellant and the sessions court judge found that he had not discharged it on a balance of probabilities.

[14] In conclusion, none of the grounds submitted by counsel for appellant warrant appellate interference to overturn the findings of fact of the sessions court judge.

[15] In respect of sentence, in my opinion, the sessions court judge had applied the correct sentencing principles. The maximum punishment is twenty years imprisonment. The sessions court judge only imposed sentences ranging from eight months to 12 months which he ordered to run concurrently. The appellant was entrusted with wide powers as a policeman and he abused it by demanding a bribe to 'settle' a case. If the sessions court judge erred in sentencing, it was only on the side of leniency as corruption offences committed by public servants should be visited with appropriate deterrent punishment. I shall therefore dismiss the appeal against the conviction and sentence in respect of the said three charges.

Appeal dismissed.

Reported by Afiq Mohamad Noor